

City of East Bethel
City Council Agenda
Work Meeting – 5:30 PM
Date: November 21, 2012



Item

- | | | |
|---------|------------|---|
| 5:30 PM | 1.0 | Call to Order |
| 5:31 PM | 2.0 | Adopt Agenda |
| 5:33 PM | 3.0 | Discuss Met Council SAC & Loan Proposals |
| 7:15 PM | 4.0 | Adjourn |



City of East Bethel City Council Agenda Information

Date:

November 21, 2012

Agenda Item Number:

Item 3.0

Agenda Item:

MCES Contract Amendment Modifications

Requested Action:

Discuss and consider approving proposed amendments to the MCES Waste Water Service and Construction Cooperation Cost Sharing Agreement.

Background Information:

Staff has conducted three meetings with the MCES to explore means to lessen the fiscal impact of MCES charges for the City obligations for the Municipal Utilities Project. As a result of the meetings, the MCES acknowledges that the City is facing financial challenges relating to our water/sewer bond repayment schedule and as such, the MCES has agreed to offer the following adjustments to address these concerns:

1. Wastewater Service Agreement

- a. MCES has proposed to move back the initial year for SAC collection from 2012 to 2013, since the wastewater reclamation facilities are scheduled for completion in fall, 2013.
- b. MCES has proposed to modify the forecast growth rate for calculation of a payment schedule for debt service and capital costs. Under this proposal the projected annual SAC goals would be reduced in half, beginning in 2013 and that reduction would continue forward through the life of agreement. The annual increase for this proposal would increase at the rate of 17% annually as opposed to the current schedule of 10.6%. This change in acceleration of the increase is not related to the economic growth rate in the City but merely accounts for the MCES requirement to achieve the final numbers on the schedule adjusted for the change as proposed.
- c. MCES is proposing to “grandfather” the Village Green Mobile Home Park into the system if the City can acquire their treatment facility. The owners of the facility have indicated a genuine interest in pursuing this proposal. A meeting with the owners will be scheduled for the week of November 4th for the purpose of obtaining their commitment to an agreement to transfer the Village Green Sewer Treatment Facility to the City of East Bethel under terms satisfactory to both parties.

- d. The 2013 SAC rate can remain at \$3,400, increasing approximately 3% annually. Alternately, MCES has proposed to reduce the 2013 SAC rate to \$3,000, increasing 3.7% annually or reduce the 2013 SAC rate to \$2,600 with 4.8% annual increases;

2. Construction Cooperation and Cost Sharing Agreement

The cost sharing for trunk sewer benefit (\$2,200,000) currently has a graduated payback schedule over 30 years. To assist the City through its near-term financial constraints, MCES has proposed to amend the agreement to defer City repayment for 10 years (interest would accrue, however). Under this proposal the City would elect in 2017 to begin the 5 year deferment with payments due in 2018 or chose the 10 year deferment on payments to begin in 2023. If the City does not select either option, the principal and interest due in 2014 will be \$117,245.11 based on the hypothetical level amortization schedule included as Attachment #3. This is a system operational cost and would be separated into an Enterprise Fund. Only until we have the revenue/expense balances for 2013 for this item will be able to determine if this will be a deficit for consideration in the 2014 budget.

The acceptance and approval of these modifications may require an amendment to our agreement MCES.

Attachment(s):

Construction Cooperation and Cost Sharing Agreement, Attachment #1

Wastewater Services Agreement, Attachment #2

MCES Proposal Amendment, Attachment #3

MCES Correspondence Indicating Payment Rescheduling

Fiscal Impact:

The purpose of the modifications of the MCES proposal is to allow the City some initial relief in the financial obligations of the first few years of our contract. The effect of these proposals would be to transfer or “backload” to the latter half of the schedules for payments. This would, hopefully, provide the City with an additional grace period while a customer base can be established and market conditions have a chance to be more conducive to development opportunities.

There is a cost to deferring these obligations and these costs would ultimately be passed along in the form of higher user charges or SAC fees if the pace of growth does not exceed the goals in the schedules that would allow keeping interest and principal payments current. The following are the additional interest charges that would accrue if the City chose to accept:

- a. Defer payment to 2018 results in an increased interest payment of \$284,436 over the life of the project; and
- b. Defer payment to 2023 results in an increased interest payment of \$585,628 over the life of the project.

If the City can afford to pay down the interest payments, these should be made in the year due. These interest costs are based on a rate of 3.6% of the beginning year balance. It does appear that it may be in the City’s interest to accept the change in the SAC rate reduction fee to \$2,600. Even though the SAC charges would rise from the proposed 3% annual rate to 4.7% per year, it would take until 2027 for these rates to equalize and at the end of 2030 there would only be a difference of \$140 between the two. The reduction in the SAC rate would place the City in a more competitive position in relation the charges of surrounding Cities with urban rates.

Recommendation(s):

Staff recommends Council discuss the implications of the proposed adjustments to the MCES agreement as presented and consider approval of those offers that may be beneficial to the City.

City Council Action

Motion by:_____

Second by:_____

Vote Yes:_____

Vote No:_____

No Action Required:_____

**CONSTRUCTION COOPERATION
AND
COST SHARING AGREEMENT**

Between

City of East Bethel and Metropolitan Council

THIS AGREEMENT ("Agreement") is made and entered into on the 12th day of November, 2010, by and between Metropolitan Council, a public corporation and political subdivision of the State of Minnesota ("Council") and the City of East Bethel, a Minnesota municipal corporation ("City").

In the joint and mutual exercise of their powers and in consideration of the mutual covenants contained in this agreement, the parties recite and agree as follows:

Recitals

1. Pursuant to Minnesota Statutes 473.504, the Council may enter into intergovernmental construction cooperation agreements to implement design and construction of facilities that will be financed, owned, operated, and maintained by Council.
2. Pursuant to Council Policy 3-7, the Council and a local government unit may, based upon timing and capacity of Council facilities to meet local trunk sewer benefits, enter into a cost sharing agreement when a Council interceptor facility provides local trunk sewer benefits.
3. The Council's 2030 Water Resources Management Policy Plan provides for Council ownership and operation of wastewater facilities to serve rural area communities that want to accommodate growth and for which the planning designation Rural Growth Center has been provided in the above Plan. The City has requested, and the Council has approved, the City's designation as a Rural Growth Center ("Rural Growth Center").
4. The Council's 2030 Water Resources Management Policy Plan includes proposed wastewater treatment facilities to serve the City initially with plans for long-term expansion and interceptor service to Oak Grove.
5. The City has submitted its 2030 Comprehensive Plan Update and 2030 Comprehensive Sewer Plan. The Council has accepted the City's 2030 Comprehensive Plan Update and has approved the City's 2030 Comprehensive Sewer Plan, thereby committing to provide wastewater treatment facilities to serve the City.

6. The Council and the City have determined that it is in their best interests to enter into this Agreement in order to have the City in conjunction with a City Construction project hereinafter referred to as the "City Project" act as the Council's agent for design and construction of certain facilities for the Council, hereinafter referred to as the "Council Project" and to specify cost sharing by City.

For purposes of the Agreement, the City Project is described as follows:

Construction of water lines and lateral sewers in the area of STH 65 and Viking Boulevard.

For purposes of this Agreement, the Council Project is described as follows:

1. A gravity wastewater interceptor to serve Oak Grove in the future, which will also serve a part of the City's trunk sewer system. The interceptor includes approximately 4,200 linear feet of 24 inch sewer and 3,600 linear feet of 42 inch sewer along Viking Boulevard and STH 65 plus 1,200 linear feet of 60-inch sewer from STH 65 to the treatment facility at 185th Avenue and Buchanan in East Bethel.

2. Approximately 7,400 linear feet of 16-inch treated water pipelines to be constructed parallel to the interceptor from the treatment facility east to STH 65 and north to Viking Boulevard.

The location of the Council Project is shown on Exhibit A.

7. The Council and City agree that each is authorized to enter into this Agreement pursuant to Minnesota Statutes § 473.504 and § 471.59, Metropolitan Council Business Item 2010-283 passed on September 8, 2010 and a motion by the City Council adopted on November 3, 2010 and, that said, work will be carried out by the parties provided by this Agreement under the provisions of § 471.59.

NOW, THEREFORE, for valuable consideration, the receipt of which is acknowledged by both parties, the parties agree as follows:

ARTICLE I Purpose of Agreement

- 1.01 The purpose of this Agreement is to set forth the terms and conditions and responsibilities of each of the parties to this Agreement with respect to the design and construction of the "Council Project."
- 1.02 The Council hereby consents to and appoints the City as its agent to design, to acquire easements and permits for (other than regulatory permits as provided in

Article IX of this Agreement), to advertise for bids for the work and construction of the Council Project, to receive and open bids pursuant to said advertisement and to enter into a contract with a successful bidder at the price specified in the bid of such bidder, and to construct the Council Project Final Construction Documents as defined ahead in Section 2.02 of this Agreement.

ARTICLE II

Preliminary Design Documents/Construction Documents

- 2.01** The Council will provide design guidelines to the City. The City will then prepare or have prepared an engineering service agreement including a scope of services for the Council Project and submit such agreement to the Council for review and acceptance. The City will prepare or have prepared and submit to Council for Council's review and acceptance, preliminary design documents for the Council Project. Council shall provide such review to the extent feasible and reasonable, within five (5) business days and shall provide its acceptance or its reason for withholding such acceptance of the preliminary design documents to the City in writing. If Council withholds acceptance of the preliminary design documents, City shall make such revisions as required to obtain the Council's acceptance of the documents. The preliminary design documents for the Council Project which have been accepted in writing by the Council are referred to as the "Council Project Preliminary Design Documents."
- 2.02** The Council will provide to the City the Council's standard construction contract provisions for inclusion into the City's construction contract for the Council Project.

The City will prepare and submit to Council for Council's review and acceptance final construction documents which shall include the Council Project Design Documents, plans, specifications and a proposed schedule for the construction of the Council Project. Council shall provide such review, to the extent feasible and reasonable, within five (5) business days and shall provide its acceptance or its reasons for withholding such acceptance to the City in writing. If Council withholds acceptance of the construction documents, City shall make such revisions as requested to obtain Council's acceptance. The final construction documents for the Council Project, which have been accepted in writing by the Council, are referred to as the "Council Project Final Construction Documents."

The Council Project Final Construction Documents shall be included by the City in the final construction documents for the City Project ("City Project Final Construction Documents").

ARTICLE III
Bidding and Construction Contract

- 3.01** The City shall include in the bidding documents specific line items for construction of the Council Project.
- 3.02** The City will tabulate the bids and submit to the Council a recommendation for selection of a bidder and award of a contract. The contract shall contain the Council's standard construction contract provisions provided by Council to City. The Council shall have ten (10) calendar days to review the bids and either accept the bids and the City's recommendation for selection of a bidder and award of contract or to reject any or all bids and the City's recommendation for a bidder and award of contract. The Council shall inform the City in writing of its acceptance or rejection as provided in the previous sentence. If the Council rejects the City's recommended selection of apparent low bidder, the Council will contemporaneously provide to the City, in writing, the reasons for such rejection. Subsequent to rejection of the bids by the City, the City may re-advertise for bids. Prior to such readvertisement for bids, the Council may submit to the City for inclusion in the City Project Final Construction Documents, changes in the Council Project which in the Council's opinion may result in reasonable bids. The City agrees to incorporate such changes into the City Project Final Construction Documents prior to readvertisement for bids for the Council Project. Immediately upon opening the second set of bids, the City and the Council shall follow the procedure set forth in this paragraph with respect to tabulation of bids, recommendation for selection of a bidder and acceptance or rejection of bidder by the Council. The City acknowledges that Council procedures may require approval by the Council's governing body if the bids for the Council Project exceed the estimated Council Project costs set forth in Exhibit B of this Agreement. The City agrees to include in the City's bid documents provisions to allow sufficient time for Council governing body approval if necessary and requested by the Council.

If the Council rejects the award recommended by the City, this contract shall become null and void. In the event this Agreement becomes null and void in accordance with the terms of this Article III Section 3.02, the Council shall pay to the City the costs of the Council Project Preliminary Design Document, Final Construction Documents, and actual, reasonable and verifiable administrative fees associated with the bidding process expended by the City for the Council Project in accordance with the terms of this Agreement.

ARTICLE IV
Construction

- 4.01** Not less than seven (7) business days prior to commencement of the Council Project by the City, the City will give written notice to the Council of its intention to commence construction, said notice to be directed as provided in Section 15.06 of this Agreement.
- 4.02** The City will administer the Council Project contract work which is governed by the Council Project Final Construction Documents. The City will provide to the Council monthly construction reports indicating construction progress. The work of the Council Project will be inspected by the Council's Authorized Representative, but the Council's Authorized Representative will not have responsibility for the supervision of the work. If the Council reasonably determines that the work has not been properly constructed in accordance with the Council Project Final Construction Documents, the Council through its Authorized Representative shall inform the City's Authorized Representative in writing of such defects as soon as such defects are identified. The term "Authorized Representative" means, with respect to the Council, the General Manager of the Council's Environmental Services Division or his/her designee and, with respect to the City, its City Administrator or his/her designee.
- 4.03** As work on the Council Project progresses, the City shall require its contractor to make the corrections and/or meet the requirements of the Council Project Final Construction Documents requested by the Council through its Authorized Representative. Council Project work shall be performed in accordance with the Council Project Final Construction Documents. The City's Authorized Representative will inform the Council in writing of completion of construction of the Council Project and will provide final pay quantity documentation. Upon being informed of completion of the Council Project, the Council will inform the City in writing whether the Council Project does or does not conform to the Council Project Final Construction Documents. The Council will further inform the City of the specific reasons for non-conformance to the Council Project Final Construction Documents and what steps, in the opinion of the Council, must be taken by the City to make the Council Project conform to the Council Project Final Construction Documents.
- 4.04** The final decision on conformance of the Council Project to the Council Project Final Construction Documents will be made by the Council. Evidence of acceptance of the completed Council Project will be in writing by letter from the Council's Authorized Representative. The Council will not unreasonably withhold the determination that the construction of the Council Project conforms to the Council Project Final Construction Documents of the Council Project.

ARTICLE V
Amendments

- 5.01** The City will submit any proposed amendments to or material changes in the approved Council Project Final Construction Documents including the schedule to the Council for review and acceptance by the Council, which approval will not be unreasonably delayed or withheld and which acceptance or rejection shall be in the form of a letter or email from the General Manager, Environmental Services or his/her designee. Such amendments or material changes to the Council Project Final Construction Documents must be submitted to the Council at least ten business (10) days prior to the implementation of such change or amendment. The City agrees that it will not proceed with amendment to or changes in the Council Project Final Construction Documents including the construction until the Council has consented to such change in accordance with its procedures including approval by the Council's governing body if required by Council's procedures and has approved such change in writing as evidenced by letter to the City from the Council's Authorized Representative.
- 5.02** The Council may submit to the City amendments or material changes in the Council Project Final Construction Documents. The City shall incorporate such amendments or changes into the Council Project Final Construction Documents and shall construct the Council Project in accordance with such amendments or changes if the City determines the amendments or changes do not interfere with the City's project. The costs of such amendments or changes to the Council Project Final Construction Documents shall be paid for by the Council in accordance with Article VI of this Agreement.

ARTICLE VI
Payment for Council Project

- 6.01** The estimated total cost for the Council Project as shown in greater detail on **Exhibit B** is Eight Million One Hundred Thousand and 00/100 Dollars (\$8,100,000.00), which total cost includes all costs for design, land acquisition and construction, including professional services but, as provided in this Article VI, Section 6.07 below, excluding legal services other than legal services associated with acquisition of property rights as provided in Article III, Section 8.02, City administrative costs and other City staff costs.
- 6.02** Within thirty (30) calendar days after execution of this Agreement, Council shall transfer to City a \$50,000 advance payment for a portion of the estimated professional services costs for design and bid/award phases of the Council Project work. Thereafter, the Council shall reimburse the City for these costs based on monthly invoices and progress reports as provided ahead in this Section VI.

- 6.03** Within thirty (30) calendar days after execution of the award of the construction contract by the City, in accordance with the terms of this Agreement, the Council shall deposit with the City a deposit of ten percent (10%) of the estimated costs for construction and construction phase engineering and inspection costs. Thereafter, the Council shall reimburse the City for these costs based upon monthly invoices and progress reports as provided ahead in this Section VI.
- 6.04.** Subsequent to acceptance of the bids and execution of a construction contract by the City in accordance with the terms of this Agreement, the Council will reimburse the City for the eligible, reasonable and verifiable costs of design and construction of the Council Project not more frequently than monthly in accordance with invoices submitted by the City based on the progress of the design and construction of the Council Project in accordance with the terms of this Agreement for review and approval of the invoices by the Council provided, however, that before submitting invoices for design and construction costs, City shall first expend the advanced payments made by Council to City pursuant to Sections 6.02 and 6.03 of this Agreement. The Council shall have fifteen (15) calendar days from receipt of such invoice to contest the amount due. The Council shall reimburse the City within thirty (30) calendar days of expiration of the Council's 15 day review period for any uncontested costs.
- 6.05** At the completion of the Council Project, the City's Authorized Representative shall submit to the Council the City's final estimate ("Final Estimate") for the Council Project and an invoice showing the Council's final share in the reasonable, eligible and verifiable costs for the Council Project. The Council shall have forty-five calendar (45) days from the receipt of the Project Engineer's Final Estimate to review and contest the amount due. The amount due shall be final, binding and conclusive upon expiration of the aforesaid forty- five (45) day examination period unless the Council has contested the amount pursuant to this paragraph.
- 6.06** In the event the City's Authorized Representative determines the need to amend the contract with a supplemental agreement or change order in accordance with Article V of this Agreement which results in an increase in the contract amount, the Council hereby agrees to remit the Council's share as documented in the supplemental agreement or change order upon completion of the Council Project and acceptance of the Council Project by the City in accordance with the terms of this Agreement and submittal to the Council of the City's Authorized Representative's Final Estimate for the Council Project showing the Council's final share in the supplemental agreement or change order.
- 6.07** The parties agree that the Council will not reimburse the following costs to the City: Legal services other than legal services associated with acquisition of property rights, as provided in Article VIII, Section 8.02 of this Agreement, City administrative costs and other City staff costs.

ARTICLE VII
Entry Upon Property

For purposes of construction of the City and Council Projects, the City and Council may each enter upon the property or property interests owned by the other party in conjunction with construction of the City Project and the Council Project.

ARTICLE VIII
Acquisition of Property Rights

- 8.01** The City shall be responsible for the acquisition of the property rights in the form of permanent and temporary easements necessary for the construction, operation and maintenance of the Council Project, including acquisition by eminent domain, if necessary. The City shall acquire such permanent easement rights in the name of the Metropolitan Council, or if acquired in its own name, shall acquire the right to transfer and shall transfer such rights to the Council. The permanent easements shall contain the terms and conditions of the easement attached hereto as Exhibit C and shall be in recordable form.
- 8.02** The City shall be responsible for all payment of costs associated with the acquisition of the property rights as described in Article VIII, Section 8.01 above, including but not limited to survey costs, appraisals, and right-of-way professional costs, legal services, expert and other fees associated with eminent domain which costs shall be reimbursed by Council in accordance with invoice procedures provided in Section VI of this Agreement.
- 8.03** Prior to start of acquisition of property rights for the Council's Project, City shall submit to Council's Authorized Representative for Council's review and acceptance, an acquisition plan including surveys and estimated costs of acquisition based upon appraised values and the City's costs of implementing and completing the acquisition plan. The City shall not exceed the above estimated cost of acquisition of property rights without the written consent of the Council's Authorized Representative.
- 8.04** On date of transfer of title to the property rights as described in Article VIII, Section 8.01 above, the City shall provide the Council, upon the Council's request, certification by the City that as of the date of transfer of title, the City has received no notice of communication from any local, State of Minnesota, or federal agency official stating that the construction of sanitary sewers within the described properties will be in violation of any local, state or federal environmental law, regulation or review procedure, which would give any person a valid claim under the Minnesota Environmental Rights Act.

- 8.05 The City agrees that the City has the obligation to convey to the Council the properties described in Article VIII, Section 8.01 above free of hazardous substances, as that term is defined in federal, state and local law, and shall provide to the Council or, if the Council so requests in writing, the opportunity, prior to the transfer of title to said properties, for the Council to reasonably assure itself that the properties are free of hazardous substances. The Council, in its sole discretion, may refuse to accept title to any of the properties if the Council determines that such properties contain hazardous substances.

ARTICLE IX Permits

Council shall apply for and secure necessary regulatory permits and approvals for the Council Project, including the Minnesota Pollution Control Agency ("MPCA") sewer extension permit and environmental review approval. The City shall assist the Council in obtaining the MPCA sewer extension permit and environmental review approval. The City shall not award the construction contract(s) until all regulatory permits and approvals for the Council Project have been obtained by the Council and copies provided by the Council to the City.

ARTICLE X Records/Reproducible Drawings

All records kept by the Council and the City with respect to the Council Project shall be subject to examination by the representative of each party hereto. All data collected, created, received, maintained or disseminated for any purpose by the activities of the City and the Council pursuant to this Agreement shall be governed by Minnesota Statutes chapter 13, as amended, and the Minnesota Rules implementing such act now in force or hereinafter adopted.

ARTICLE XI Ownership, Warranties and Guarantees

- 11.01 Upon completion of the construction and acceptance of the Council Project by the Council pursuant to this Agreement, the Council Project and all associated warranties and guarantees provided by the construction contractors and subcontractors associated with the Council Project shall be assigned by the City to the Council and shall become the property of the Council. All operation, maintenance, restoration, repair or replacement required for the Council Project thereafter shall be performed by the Council.
- 11.02 At the time of completion of construction of the Council Project in accordance with the terms of this Agreement, the Council Project shall be considered to be a metropolitan interceptor which is part of the Metropolitan Disposal System.

ARTICLE XII
City Cost Sharing

- 12.01** The Council Project shall benefit the City by being designed and constructed to provide trunk sanitary sewer service to the City for the portion of the Council Project located along Viking Boulevard and STH 65. The City cost share includes two components: 1) incremental construction cost of increasing the sewer capacity to provide the City trunk sewer benefit; and 2) acceleration cost associated with the remainder of the costs which are being incurred approximately 20 years earlier than planned for service to the City of Oak Grove (computed based upon 3% annual inflation rate and 4.5% interest rate).

The City cost share is estimated as follows:

Total Capital Cost	= \$5,100,000
Incremental Cost	= \$1,200,000
Acceleration Cost	= \$1,000,000
City Cost Share	= \$2,200,000
	= 43%

The parties agree that the amount of the City cost share shall be 43% of the total actual costs of the Viking Boulevard/STH 65 sanitary sewer interceptor.

12.02 City Payments to Council

No later than June 30 of each year, the City shall make annual payments including interest at 3.0%, to the Council for the City's cost share obligation in accordance with the schedule shown in Exhibit D. Exhibit D shall be adjusted based on total actual costs of the Viking Blvd/STH 65 sanitary sewer interceptor.

ARTICLE XIII
Employees

- 13.01** All employees of the City and all other persons engaged by the City in the performance of any work or services required or provided for herein to be performed by the City shall not be considered employees of the Council, and that any and all claims that may or might arise under the Worker's Compensation Act or the Unemployment Compensation Act of the State of Minnesota on behalf of said employees while so engaged, and any and all claims made by any third parties as a consequence of any act or omission on the part of said employees while so engaged, on any of the work or services provided to be rendered herein, shall in no way be the obligation or responsibility of the Council.

- 13.02** All employees of the Council and all other persons engaged by the Council in the performance of any work or services required or provided for herein to be performed by the Council shall not be considered employees of the City, and that any and all claims that may or might arise under the Worker's Compensation Act or the Unemployment Compensation Act of the State of Minnesota on behalf of said employees while so engaged, and any and all claims made by any third parties as a consequence of any act or omission on the part of said employees while so engaged, on any of the work or services provided to be rendered herein, shall in no way be the obligation or responsibility of the City.

ARTICLE XIV

Liability

- 14.01** Each party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by the law and shall not be responsible for the acts of the other party and the results thereof. The City's and the Council's liability is governed by the provisions of Minnesota Statutes chapter 466.
- 14.02** The City and the Council each warrant that they are able to comply with the aforementioned indemnity requirements through an insurance or self insurance program and have minimum coverage consistent with the liability limits contained in Minnesota Statutes chapter 466.
- 14.03** The City further agrees that any contract let by the City for the performance of the Council Project as provided herein shall include clauses that will: 1) require the contractor to defend, indemnify, and save harmless the Council, its officers, agents and employees from claims, suits, demands, damages, judgments, costs, interest, expenses, including, without limitation, reasonable attorney fees, witness fees, and disbursements incurred in defense thereof arising out of or by reason of the negligence of said contractor, its officers, employees, agents or subcontractors; 2) require the contractor to provide and maintain insurance as required in the contract documents between the City and the contractor and to provide the Council, also as required in the contract documents between the City and the contractor, with Certificates of Insurance naming the Council as additional insured; and 3) require the contractor to be an independent contractor for the purposes of completing the work provided for in this Agreement.

ARTICLE XV

General Provisions

- 15.01.** It is understood and agreed that the entire Agreement between the parties is contained herein and the addendums and exhibits hereto and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. The Recitals and all items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.

Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties hereto.

- 15.02 Applicable provisions of Minnesota State law, federal law and of any applicable local ordinances shall be considered a part of this Agreement as though fully set forth herein. Specifically, the City agrees to comply with all federal, state and local applicable laws and ordinances relating to nondiscrimination, affirmative action, public purchases, contracting employment, including worker's compensation and surety deposits required for construction contracts.
- 15.03. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to the parties. One or more waivers by said party of any provision term, condition or covenant shall not be construed by the other parties as a waiver of a subsequent breach of the same by other parties.
- 15.04. The covenants of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.
- 15.05. This Agreement is entered into in and under the laws of the State of Minnesota and shall be interpreted in accordance therewith.
- 15.06. Any notice or demand, which may or must be given or made by a party hereto, under the terms of this Agreement or any statute or ordinance, shall be in writing and shall be sent certified mail or delivered in person to the other party addressed as follows:

General Manager
Environmental Services
Metropolitan Council
390 North Robert Street
St. Paul, MN 55101

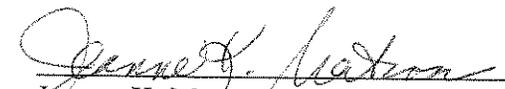
City Administrator
City of East Bethel
2241 221st Avenue NE
East Bethel, MN 55011

- 15.07 The parties to this Agreement acknowledge and agree to the following:
 - a) This Agreement addresses certain of the rights and obligations to the parties under Minnesota Statutes, chapter 473, but this Agreement is not intended to be a complete description of all rights and obligations of the parties with respect to each other that may exist under such chapter or other provisions of law.

- b) Future changes in Minnesota Statutes, chapter 473, and other applicable law may modify the rights and obligations of the parties with respect to each other and such changes in law shall take precedence over any provisions of this Agreement that may be inconsistent and irreconcilable with such changes.

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

Approved as to form:



Jeanne K. Matross
Office of General Counsel

METROPOLITAN COUNCIL

By: 

Title: Regional Administrator

Date: 11-12-10

CITY OF EAST BETHEL

By: 

Title: Mayor

Date: November 3, 2010

ATTEST:

By: 

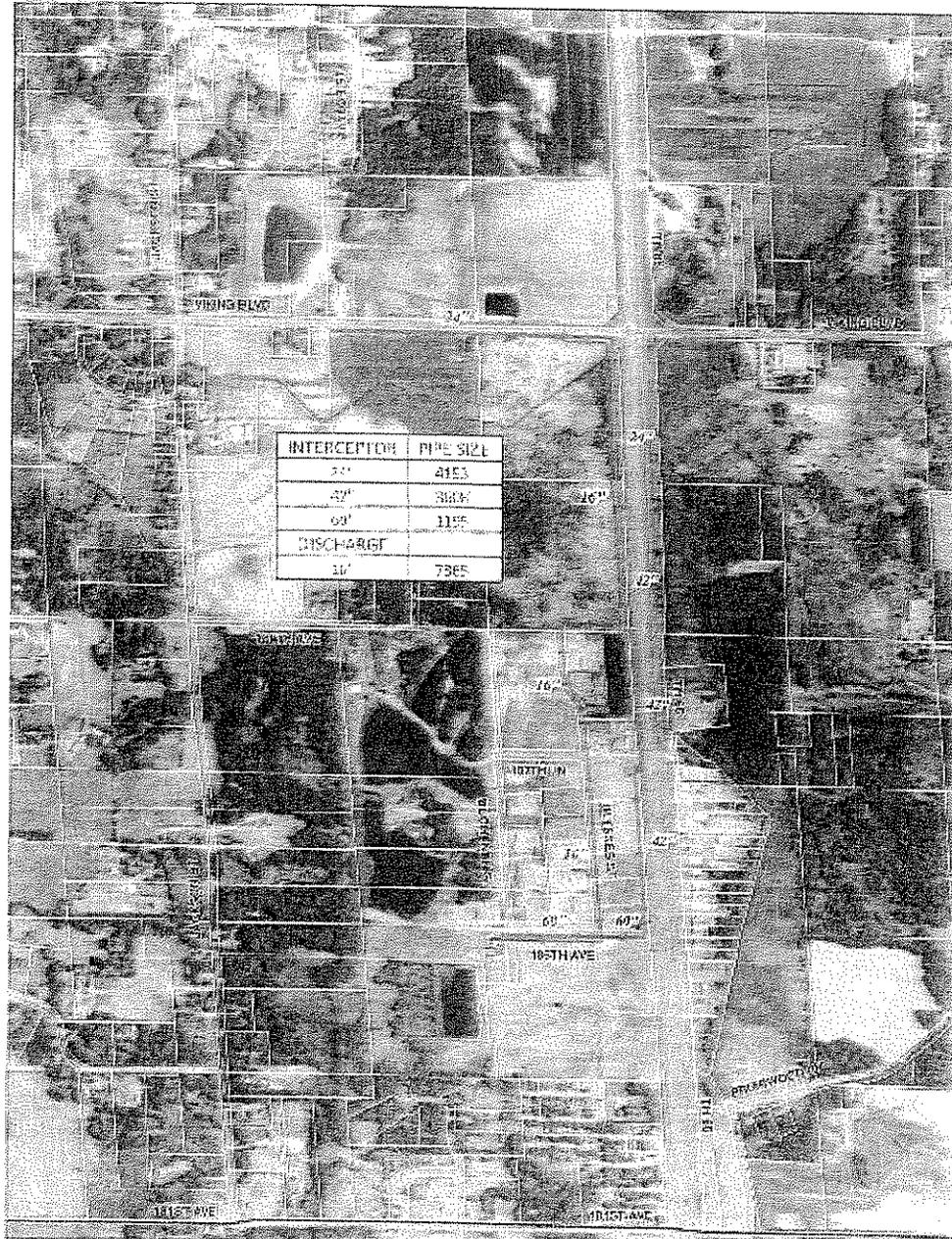
Title: City Administrator

Date: November 3, 2010

LIST OF EXHIBITS

Exhibit A	Location of Council Project
Exhibit B	Estimated Total Cost for Council Project
Exhibit C	Permanent Easement
Exhibit D	City Cost Share

EXHIBIT A Location of Council Project



LEGEND
 □ WWTP
 --- MISC. Interceptor
 --- MISC. Discharge



PLANNING STUDY

**PHASE I PROJECT 1
 SANITARY SEWER
 FIGURE NO. 2.1**

Exhibit A

EXHIBIT B
Estimated Costs for Council Project

Interceptor Sewer Facilities	
Viking Blvd/STH 65 Segments	\$5,100,000
Plant Influent/Storage Segment	1,600,000
Treated Water Pipeline	<u>1,400,000</u>
Total Estimated Cost	\$8,100,000

Note: Total estimated cost includes all costs for design, land acquisition, and construction, including professional services, but excluding City administrative costs, other City staff costs and legal services other than legal, services associated with acquisition of property rights as provided in Article VIII, Section 8.02.

EASEMENT

THIS INSTRUMENT is made this _____ day of _____, 200____, by and between _____, a _____, of the State of _____, Grantor, and the Metropolitan Council, a public corporation and political subdivision of the State of Minnesota, grantee;

WITNESSETH, that Grantor, the owner of the property described in Exhibit A, in consideration of One Dollar and other good and valuable consideration to them in hand paid, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to Grantee, its successors and assigns, the following described easement[s] for sanitary sewer purposes which easement[s] are located on the property described in Exhibit A:

Permanent Easement

See Exhibit A attached hereto and incorporated herein for legal description of permanent sanitary sewer easement.

The above-described easement[s] include[s] the right of Grantee, its employees, agents and contractors to do whatever is necessary for enjoyment of the rights granted herein including the right to enter and grade and excavate the easement area[s] for purposes of constructing, operating, maintaining, altering, repairing, replacing and/or removing said sanitary sewers. The permanent easement further includes the following rights: (a) the right to cut, trim, or remove from the easement area[s] trees, shrubs, undergrowth or other vegetation as in the Grantee's judgment unreasonably interfere with the use of the easement[s] herein by Grantee, its successors and assigns, provided that Grantee shall take all reasonable precautions to prevent any damage to the property subject to this [these] easement[s]; and (b) the permanent right of access over and across the Grantor's property described in Exhibit A to the permanent easement area.

Subsequent to the date of the easement[s] as written above, Grantor, its heirs, successors and assigns, will not erect, construct, or create any building, improvement, obstruction, perpendicular utility crossing, or structure of any kind, either above or below the surface of the easement area[s] or plant any trees, or stockpile construction debris or construction equipment, or change the grade thereof of the easement area[s] without the express written permission of the Grantee.

WASTEWATER SERVICE AGREEMENT

**Between
City of East Bethel
and
Metropolitan Council**

THIS AGREEMENT (“Agreement”), effective on the date of execution by both parties, is made and entered into by and between Metropolitan Council, a public corporation and political subdivision of the State of Minnesota (“Council”) and the City of East Bethel, a Minnesota municipal corporation (“City”).

RECITALS

1. Pursuant to Minnesota Statutes § 473.517, subd. 1, the Council shall allocate current costs of operation, maintenance, and debt service (“Current Costs”) among and paid by all local government units which discharge wastewater directly or indirectly into the metropolitan disposal system. For purposes of this Agreement, the above described payments are referred to herein as municipal wastewater charges (“MWC”). The Council’s wastewater treatment plant, interceptor and effluent pipes to serve the City will be a part of the metropolitan disposal system.
2. Pursuant to Minnesota Statutes § 473.517, subd. 3, the Council shall allocate the reserved capacity portion of the costs of acquisition, betterment, and debt service of the interceptors and treatment works (“Reserved Capacity Costs”) among and paid by all local government units through a sewer availability charge (“SAC”) for each new connection or increase in capacity demand to the metropolitan disposal system.
3. Pursuant to Minnesota Statutes § 473.517, subd. 6, the Council may provide for the deferment of payment of all or part of the allocated costs pursuant to Minnesota Statutes § 473.517, subd. 3, repayable with interest at the Council’s average rate of borrowing.
4. The Council’s 2030 Water Resources Management Policy Plan (“Policy Plan”) provides for Council ownership and operation of wastewater facilities to serve rural area communities that want to accommodate growth, for which the planning designation Rural Growth Center has been provided in the Policy Plan. The City has requested, and the Council has approved, the City’s designation as a Rural Growth Center (“Rural Growth Center”).
5. The Council’s Policy Plan provides wastewater service to the City through wastewater treatment facilities to be constructed specifically to serve the City initially, and that are also planned so that these facilities may serve a portion of the city of Oak Grove or other communities in the future. The City has submitted, and the Council has approved, the City’s 2030 Comprehensive Sewer Plan.

6. The Council's Policy Plan policy on rates and charges provides that: (a) municipal wastewater charges will be allocated to communities uniformly, based on flow; and (b) sewer availability charges for a Rural Growth Center shall be based on the reserve capacity of the wastewater treatment facility and the Council's debt service specific to the Rural Growth Center.
7. The Council is currently designing the East Bethel wastewater treatment facility, MCES Project 801620 to serve the City. Construction is scheduled for 2011-2012.
8. Council and City have determined that it is in their best interests to enter into this Agreement in order to specify SAC matters for the City and to specify the terms for contingent loans for part of the reserve capacity charges and other related matters.
9. The Council has authorized its Regional Administrator to enter into this Agreement pursuant to Business Item No. 2010-355 passed by the Council on October 27, 2010. The City has authorized its Administrator to enter into this Agreement pursuant to a motion passed by the City Council on November 3, 2010.

NOW, THEREFORE, for valuable consideration, the receipt of which is acknowledged by both parties, the parties agree as follows:

ARTICLE I Financial Terms and Conditions

1.01 Municipal Wastewater Charges (MWC).

a. Allocation. Council shall measure the City's wastewater flow and allocate current costs consistent with the methodology used throughout the metropolitan disposal system to allocate Current Costs among and charge local government units in the form of MWC, as may be amended from time to time. The Council's regular MWC billings to the City shall begin for the calendar year 2014 based on the wastewater flow for the period July 1, 2012 – June 30, 2013. Prior to that regular cycle, the Council's MWC billings to the City for the calendar year 2013 shall be based on the estimated number of SAC units served prior to June 30, 2012, flow estimates/SAC and the duration of such usable connections within the subject period. Council shall invoice the City monthly. City shall pay Council within thirty (30) calendar days of each billing.

b. City Obligation - Charges. The City acknowledges its obligation under Minnesota Statutes, including, but not limited to, § 473.519, to adopt and maintain a system of charges for the use and availability of the metropolitan disposal system located within the City which will assure that each recipient of wastewater treatment services within or served by the City will pay its proportionate share of the Current Cost charges allocated to the City by the Council under Minnesota Statutes, § 473.517, as required by federal law and regulations.

c. On or before December 31, 2011, the City shall submit to the Council, for review and approval, a proposed ordinance implementing a system of volumetric charges for the use and availability of the metropolitan disposal system, and shall make modifications in such system if notified by the Council, as needed to comply with the provisions of Minnesota Statutes § 473.519, the Council's Waste Discharge Rules and federal law and regulations. Upon approval, the Municipality shall maintain such system of volumetric charges in accordance with section 473.519.

d. City Obligation – Connections. The City agrees that within twelve (12) months of service being available, the City shall mandate connections to the metropolitan disposal system and will pay the Council SAC for connections in the business district described as Project 1 Phase One.

e. Reservation of Rights. Nothing in this article shall be deemed to limit the Council's rights to add-to, amend or change its method of allocating and/or collecting costs under Minnesota Statutes, section 473.517, subdivision 1.

1.02 Sewer Availability Charges (SAC).

a. City Obligation. The City acknowledges its obligation under Minnesota Statutes, including, but not limited to, § 473.517 subd. 3, to pay Reserved Capacity Costs allocated to the City by the Council under § 473.517, subd. 3. These costs are currently allocated to cities by the Council through the Sewer Availability Charge (SAC) system, based on the number of residential equivalent SAC units which become connected within the City either directly or indirectly to the metropolitan disposal system. City acknowledges and agrees that SAC and reporting for it will be due beginning twelve (12) months prior to startup of the wastewater treatment facility. The City acknowledges and agrees that it is liable for SAC whether or not it collects, or is able to collect, such amounts from any property owners or other third parties.

b. Implementation of SAC System. Under the current SAC system, the City shall be responsible for monitoring, reporting of connections, and other duties in accordance with Council's policies and procedures for collecting SAC charges. If under the current SAC system, the City chooses to collect charges from the owners of the property connected to City sewers which are connected to the metropolitan disposal system, it shall be solely responsible for billing and collecting such charges from the property owners.

c. Reservation of Rights. Nothing in this article shall be deemed to limit the Council's rights to add-to, amend or change its method of allocating and/or collecting costs under Minnesota Statutes, section 473.517, subdivision 3 as it pertains to the SAC rate and general SAC collection requirements and procedures.

d. East Bethel's City-Specific SAC (hereafter "East Bethel SAC"). Council shall establish the East Bethel SAC pursuant to the Council's policies and SAC procedures. The East Bethel SAC shall initially be based on the wastewater treatment facility debt service specific to the City, as estimated in Exhibit A. The estimated capital costs described in Exhibit A, and the East Bethel SAC based on the associated debt service, may be adjusted after final project costs have been determined and if needed for additional project costs should they occur prior to the end of the designation of the city of East Bethel as a Rural Growth Center. Adjustments, if any, to the SAC rates will not be retroactive.

Council and City agree that the East Bethel SAC has been determined, based on the following factors: (1) debt service and/or capital costs on City-specific capital costs based on financing over a term extending to 2030 at an interest rate based on the actual rate(s) of financings used by the Council to fund the project costs, currently estimated at 3.0% for the initial facility and 4.5% for the future expansion; (2) 2030 Comprehensive Plan forecast of 5,500 SAC units; (3) a constant SAC unit growth rate of approximately 10.6% annually from 2012 through 2030; (4) reserve capacity determination using cumulative SAC units as forecasted for the currently used portion of total capacity; (5) fixed East Bethel SAC rate increases of 3% annually; and (6) East Bethel SAC computed to recover the present value of reserve capacity of debt service as determined in (1) hereinbefore.

Council and City agree that the East Bethel SAC based on the capital costs in Exhibit A and the above factors, shall be \$3,300 in 2012, increasing 3% annually to \$5,600 in 2030. East Bethel SAC may be adjusted if the final capital costs and interest rates are materially different than expected.

e. Nothing in this Agreement prohibits or restricts the sewer, SAC or other related charges that the City may or may not charge to property owners within the City.

1.03 Reserve Capacity Loans.

a. Amount. If at the end of each calendar year, starting with the year 2012, the SAC units attributed (either i), actually paid, or ii) loaned as described in this paragraph) to the Council by the City on an annual basis, are below the estimate of growth for the year based on the 2030 Comprehensive Plan forecast for the City used to set the rates as described herein, the deficiency shall be considered a Reserve Capacity Loan ("Reserve Capacity Loan") from the Council to the City, pursuant to M.S. 473.517 subd. 6. Interest shall accrue on the prior year-end balance at 3.6% APR annually. In years where the actual SAC paid by the City to the Council exceeds the estimate, the surplus SAC shall be considered a payment against any then outstanding loans. If such a surplus occurs and no loan balance is then outstanding, no rebate shall occur, however, the amount of units paid over the cumulative forecast shall be available to offset a future year shortage (that is, to reduce the required loan in a future year when the annual SAC units paid are less than forecast).

b. **Payment.** If a Reserve Capacity Loan balance is outstanding at any year-end, the City shall pay, at a minimum, an annual amount set by the Council which shall be an amount not greater than the ordinary municipal wastewater charge to be charged to the City in that same calendar year based on the community's annual flow volume in the metropolitan disposal system. [w1]The payment shall be applied first to interest accrued and the remainder against the cumulative outstanding principal on the loan. During the first five years of the Loan, the Council may require a lesser payment to allow the City to gradually adjust its retail sewer charges or other revenues to cover the Loan payments.

Minimum payments on the loan shall be determined by the Council in January of each year and included on monthly bills, provided however, that the Council may estimate the loan payment requirements for the first two months of each year and reconcile the difference in the March bill of each year.

c. **Prepayment.** The City may prepay all or part of the loan at any time to avoid additional interest accrual.

d. **Developing Community.** The Council agrees that if: a) the City meets the conditions of the Council to become a Developing Community as determined by the Council; or b) another city is provided sewer service through the East Bethel wastewater treatment facilities; or c) the City reaches its current 2030 Comprehensive Sewer Plan population forecast, or d) at the conclusion of the 2030 Water Resources Policy Plan (*i.e.* at the end of the year 2030), the East Bethel SAC rate may be frozen by the Council at the then current rate and retained at that rate, even though that rate is a higher rate than the urban SAC until such time as the outstanding loan is entirely repaid. This term shall survive the Agreement until the entire Loan is repaid, or the condition in Section 1.03(e) occurs:

e. The parties agree that the terms of the Agreement are intended to handle the short or medium term problem that planned growth is deferred from the expectations of the Comprehensive Plans. However, if 30 years after the first Loan is recorded, substantial planned growth has not occurred and expectations at that time are that it may continue to be below 2030 forecasts, the parties agree to renegotiate in good faith to provide for an end to the Loan that does not require an unreasonable burden on the sewer rates of the still small City.

ARTICLE II

Conveyance of Interceptor Ownership to City

2.01 **Transfer.**

If the Council determines that the interceptor constructed along Viking Blvd. and STH 65 no longer serves a regional benefit, the Council will transfer to the City and the City

agrees, without payment from the Council, to accept title and ownership of that portion of the aforementioned interceptor within the City. Such transfer may occur at any time after determination in the sole discretion of the Council that the aforementioned interceptor no longer serves a regional benefit and certification by the Council that the interceptor to be transferred is in good operating condition.

ARTICLE III

Compliance with Council Rules and Policies

3.01 Infiltration and Inflow.

The City shall comply with the Council's policy and procedures on Infiltration/Inflow and its standards for allowable peak hour to average daily wastewater flow. On or before June 30, 2012, the City shall submit its proposed Infiltration/Inflow program to the Council for review and approval and shall adopt and follow any recommendations of the Council regarding inflow and infiltration into the City's sewage collection system.

3.02 Waste Discharge Rules.

The City acknowledges that all discharges to the City's sewage collection system are subject to the Council's Waste Discharge Rules and any other rules or requirements adopted by the Council relating to the metropolitan disposal system. The City shall adopt a sanitary sewer use ordinance which ensures City compliance with Council's policies and Waste Discharge Rules, however amended. The City agrees to cooperate with the Council in enforcement of Council's rules and enforcement requirements. Nothing in this Agreement prohibits or limits the Council's right to make general changes to the Waste Discharge Rules.

3.03 Comprehensive Plan.

The City has prepared and adopted its 2030 Comprehensive Plan Update and Tier II Comprehensive Sewer Plan, in accordance with Minnesota Statutes §§ 462.355, subd. 1a and 473.864, subd. 2. The Council has approved the City's Tier II Comprehensive Sewer Plan and authorized the City to put its 2030 Comprehensive Plan Update into effect.

In accordance with Minnesota Statutes, section 473.858, subd. 1, and section 473.865, subd. 3, upon approval and adoption by the City of the comprehensive plan, the City shall adopt or amend official controls to ensure planned, orderly, and staged development consistent with the comprehensive plan and so as not to conflict with the comprehensive plan. The City shall submit copies of such official controls to the Council in accordance with Minnesota Statutes, section 473.865, subd. 1.

Nothing in this agreement shall modify the City's obligations under the referenced statutes or in the Comprehensive Plan.

ARTICLE IV
Notices

Any notice or demand which may or must be given or made by either party to this Agreement, under the terms of this Agreement and any statute or ordinance, shall be in writing and shall be sent by certified mail, return receipt requested, or delivered in person, to the other party addressed or delivered as follows:

General Manager
Environmental Services
Metropolitan Council
390 North Robert Street
St. Paul, MN 55101

City Administrator
2241 221st Avenue NE
East Bethel, MN 55011

ARTICLE V
General Provisions

5.01 Successors and Assignment.

The Covenants of this Agreement shall be binding upon and inure to the benefit of the parties, their successors, and assigns. The City may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of the Council and a fully executed Assignment Agreement, executed by authorized representatives of the parties to this Agreement.

5.02 Amendments.

The terms of this Agreement may be changed only by the mutual agreement of the parties. Such changes shall be effective only upon execution of written amendments executed by authorized representatives of the parties to this Agreement.

5.03 Non-Waiver.

If the Council fails to enforce any provision of this Agreement, that failure does not waive the provision or any other provision or the Council's right to enforce it at a later date.

5.04 Contract Complete.

This Agreement contains all negotiations and agreements between the Council and the City related to the matters included herein. No other understanding regarding this Agreement, whether written or oral, may be used to bind either Party.

5.05 Construction of Agreement.

This Agreement is intended to assist in implementing the Council's policy plans and system plans and shall be interpreted consistently with the provisions and intent of such plans.

5.06 Severability.

The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire agreement with respect to either Party.

5.07 Liability.

Except as provided elsewhere in this Agreement, each Party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other Party and results thereof. The liability of the Council and the City shall be governed by the provisions of Minnesota Statutes, chapter 466, and other applicable law. Nothing in this Agreement shall constitute or be construed as a waiver by the Council or the City of any statutory limits on or exceptions to liability.

5.08 Council Audits.

In accordance with Minnesota Statutes, section 16C.05, subd. 5, the City's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the Council and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

5.09 Government Data Practices.

The City and Council must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13, as it applies to all data provided by the Council under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City under this Agreement. The civil remedies of Minnesota Statutes, section 13.08, apply to the release of the data referred to in this clause by either the City or the Council.

5.10 Conformance to Law.

The parties to this Agreement acknowledge and agree to the following:

a) This Agreement addresses certain of the rights and obligations to the parties under Minnesota Statutes, chapter 473, but this Agreement is not intended to be a complete description of all rights and obligations of the parties with respect to each other that may exist under such chapter or other provisions of law.

b) Future changes in Minnesota Statutes, chapter 473, and other applicable law may modify the rights and obligations of the parties with respect to each other and such changes in law shall take precedence over any provisions of this Agreement that may be inconsistent and irreconcilable with such changes.

5.11 Venue.

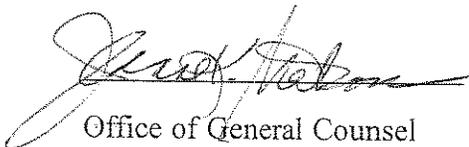
This Agreement shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

5.12 Recitals.

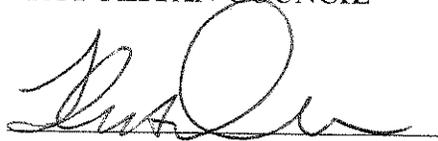
The Recitals are hereby incorporated into and made a part of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

Approved as to Form:


Office of General Counsel

METROPOLITAN COUNCIL

By: 

Its: Regional Administrator

Date: 12-9-10

FOR THE CITY OF EAST BETHEL

By: 

Title: Mayor

Date: November 17, 2010

ATTEST:

By: 

Title: City Administrator

Date: November 17, 2010

EXHIBIT A

ESTIMATED CAPITAL COSTS FOR EAST BETHEL WASTEWATER TREATMENT FACILITIES

Component	Est. Cost (1)
Initial Project	
Influent Storage (2)	\$ 600,000
Wastewater Treatment Plant (3)	9,500,000
Treated Water Distribution System (4)	5,700,000
Land Application Facilities (5)	1,600,000
Land Acquisition (6)	600,000
<hr/>	
Total - Initial Project	\$18,000,000
<hr/>	
Future Facility Expansion (3)	
Plant Expansion	\$10,000,000
Treated Water Distribution	2,000,000
Land Application Facilities (incl. land)	<u>2,000,000</u>
Total-Expansion	\$14,000,000

Notes:

1. Estimated cost includes construction, engineering, inspection, and administration.
2. Incremental cost of increasing size of influent interceptor sewer from STH 65 to treatment facility from 24-inch diameter to 60-inch diameter. This option is being used in lieu of providing storage within the wastewater treatment facility.
3. Plant will be constructed in phases. Initial phase has 0.41 mgd capacity. Future facility expansion (approx. year 2020) will increase capacity to 1.22 mgd.
4. Pipeline to convey treated water from wastewater treatment plant to the two initial land application facilities.
5. Facilities designed to distribute treated water such that it infiltrates through the soil and recharges the groundwater.
6. Cost of acquiring two land application sites (\$60,000 for one; free long-term use of second site) and two-thirds of the wastewater treatment plant site, which is planned to serve portions of Oak Grove, and potentially Ham Lake, in the future.

MC Contract 10I024

Amendment No. 1

Wastewater Service Agreement
Between
City of East Bethel
And
Metropolitan Council

1. Amend Article 1.02d as follows:
Delete Paragraphs two and three. Substitute the following:

Council and City agree that the East Bethel SAC has been determined, based on the following factors: (1) debt service and/or capital costs on City-specific capital costs based on the actual rate(s) of financing used by the Council to fund the project costs, currently estimated at 2.73% for the initial facility and 4.5% for the future expansion; (2) 2030 Comprehensive Plan forecast of 5,500 SAC units; (3) growth beginning with 50 SAC units in 2013; (4) reserve capacity determination using cumulative SAC units as forecasted for the currently used portion of total capacity; and (5) East Bethel SAC computed to recover the present value of reserve capacity of debt service as determined in (1) hereinbefore.

Council and City agree that the East Bethel SAC based on the capital costs in Exhibit A and the above factors, shall be \$2,600 in 2013, increasing approximately 5% annually thereafter. East Bethel SAC may be adjusted if the final capital costs and interest rates for the initial facility, and/or capital costs, interest rate, and timing of the future expansion, are materially different than estimated.

2. Add new Article 1.02 as follows:
 - f. The City owns a wastewater treatment plant serving the Castle Towers area. The City intends to acquire the wastewater treatment plant serving the Village Green area. In accordance with the Council's SAC policy and procedure, the City will not owe SAC for the currently served properties in those two areas. However, these units shall not be counted as part of the 5500 SAC units described in Article 1.02d.
3. Revise Article 1.03a as follows.
Change year 2012 to 2013.
4. Replace Exhibit A with revised Exhibit A, which includes updated cost estimates for the initial project.

EXHIBIT A

**ESTIMATED CAPITAL COSTS FOR
EAST BETHEL WASTEWATR TREATMENT FACILITIES**

Component	Est. Cost (1)
Initial Project	
Influent Storage (2)	\$ 600,000
Wastewater Treatment Plant (3)	12,200,000
Treated Water Distribution System (4)	5,000,000
Land Application Facilities (5)	1,600,000
Land Acquisition (6)	600,000
Total – Initial Project	\$20,000,000
Future Facility Expansion (3)	
Plant Expansion	\$10,000,000
Treated Water Distribution	2,000,000
Land Application Facilities (incl. land)	<u>2,000,000</u>
Total Expansion	\$14,000,000

Notes:

1. Estimated costs includes construction, engineering, inspection, and administration.
2. Incremental cost of increasing size of influent interceptor sewer from STH 65 to treatment facility from 24-inch diameter to 60-inch diameter. This option is being used in lieu of providing storage within the wastewater treatment facility.
3. Plant will be constructed in phases. Initial phase has 0.41 mgd capacity. Future capacity expansion (approx. year 2023) will increase capacity to 1.22 mgd.
4. Pipeline to convey treated water from wastewater treatment plant to the two initial land application facilities.

5. Facilities designed to distribute treated water such that it infiltrates through the soil and recharges the groundwater.
6. Cost of acquiring two land application sites (\$60,000 for one; free long-term use of second site) and two-thirds of the wastewater treatment plant site, which is planned to serve portions of Oak Grove, and potentially Ham Lake, in the future.

MC Contract 10I027

Amendment No. 3

Construction Cooperation and Cost Agreement
Between
City of East Bethel and Metropolitan Council

Delete Article 1.02, and Exhibit D. Insert the following new Article 12.02:

12.02 City Payments to Council

By December 21, 2017, the City shall notify the Council of the City's intent to begin payments in 2018 or 2023. Based on 3.0% interest, annual payments beginning in 2018 shall be \$155,000 through 2040. Based on 3.0% interest, annual payments beginning in 2023 shall be \$215,000 through 2040. Annual payments shall be due by June 30 of each year.

Rural Growth Center (RGC) - East Bethel

Reserve Capacity Loan Example

Key Assumptions and Terms:

- 1 \$20 million capital cost for plant plus a \$14m (in 2010 \$) expansion in 2023 (the interceptor cost is recovered separately under a cost sharing agreement).
- 2 50 RECs are planned in 2013, growing 17% per year until 5,500 RECs in 2031 (per Comp Plan).
- 3 The SAC rate is increased 3.7% per year, rounded to the nearest \$10.
- 4 The SAC rate is computed to recover present value (at estimated borrow rate for this project of 2.73%) of reserve capacity portion of capital costs over 20 years.
- 5 If SAC units paid are less than planned (based on 2030 forecast), an annual Reserve Capacity Loan is automatically made (at MCES' average borrowing rate).
- 6 Principal and interest is payable on the loan annually (at year-end) with a maximum payment equal to Municipal Wastewater Charges paid in the same year.
- 7 Interest on financing at 3.6% is charged on beginning year balance payable by year end. No interest charged during year of deficiency.

Hypothetical example of how Loan would work:

Year	SAC Rate	SAC Units		Anticipated SAC Revenue based on Forecast SAC units	Actual SAC Revenue	Reserve Capacity Loan					Year-End Balance		
		Forecast	Actual			Variance	Beginning Balance	New Borrowing	Loan Payment	Interest Rate		Interest Owed	Principal Paid
2012													
2013	3,000	50	30	-20	150,000	90,000	0	60,000	0	3.6%	0	0	60,000
2014	3,110	59	40	-19	183,490	124,400	60,000	59,090	0	3.6%	2,160	0	121,250
2015	3,230	69	60	-9	222,870	193,800	121,250	29,070	12,595	3.6%	4,365	8,230	142,090
2016	3,350	81	90	9	271,350	301,500	142,090	-30,150	24,092	3.6%	5,115	18,976	92,964
2017	3,470	95	100	5	329,650	347,000	92,964	-17,350	41,993	3.6%	3,347	38,647	36,968
2018	3,600	111	120	9	399,600	432,000	36,968	-32,400	5,899	3.6%	1,331	4,568	0
2019	3,730	130			484,900								
2020	3,870	152			588,240								
2021	4,010	178			713,780								
2022	4,160	208			865,280								
2023	4,310	243			1,047,330								
2024	4,470	284			1,269,480								
2025	4,640	332			1,540,480								
2026	4,810	388			1,866,280								
2027	4,990	454			2,265,460								
2028	5,170	531			2,745,270								
2029	5,360	621			3,328,560								
2030	5,560	727			4,042,120								
2031	5,770	841			4,852,570								

East Bethel Cost Share Payment Schedule

10/4/2012

<u>Hypothetical Level Amortization Schedule</u>					<u>Actual Amortization Schedule</u>				
	3.0%					3.0%			
	<u>principal</u>	<u>interest</u>	<u>level pmt</u>	<u>balance</u>	<u>actual pmt</u>	<u>principal paid</u>	<u>interest owed</u>	<u>interest paid</u>	<u>balance</u>
2012				\$2,200,000.00					\$2,200,000.00
2013	\$51,245.11	\$66,000.00	\$117,245.11	\$2,148,754.89	\$0.00	\$0.00	\$66,000.00	\$0.00	\$2,266,000.00
2014	\$52,782.47	\$64,462.65	\$117,245.11	\$2,095,972.42	\$0.00	\$0.00	\$67,980.00	\$0.00	\$2,333,980.00
2015	\$54,365.94	\$62,879.17	\$117,245.11	\$2,041,606.48	\$0.00	\$0.00	\$70,019.40	\$0.00	\$2,403,999.40
2016	\$55,996.92	\$61,248.19	\$117,245.11	\$1,985,609.56	\$0.00	\$0.00	\$72,119.98	\$0.00	\$2,476,119.38
2017	\$57,676.83	\$59,568.29	\$117,245.11	\$1,927,932.73	\$0.00	\$0.00	\$74,283.58	\$0.00	\$2,550,402.96
2018	\$59,407.13	\$57,837.98	\$117,245.11	\$1,868,525.60	\$155,100.00	\$78,587.91	\$76,512.09	\$76,512.09	\$2,471,815.05
2019	\$61,189.35	\$56,055.77	\$117,245.11	\$1,807,336.26	\$155,100.00	\$80,945.55	\$74,154.45	\$74,154.45	\$2,390,869.50
2020	\$63,025.03	\$54,220.09	\$117,245.11	\$1,744,311.23	\$155,100.00	\$83,373.91	\$71,726.09	\$71,726.09	\$2,307,495.59
2021	\$64,915.78	\$52,329.34	\$117,245.11	\$1,679,395.45	\$155,100.00	\$85,875.13	\$69,224.87	\$69,224.87	\$2,221,620.46
2022	\$66,863.25	\$50,381.86	\$117,245.11	\$1,612,532.20	\$155,100.00	\$88,451.39	\$66,648.61	\$66,648.61	\$2,133,169.07
2023	\$68,869.15	\$48,375.97	\$117,245.11	\$1,543,663.06	\$155,100.00	\$91,104.93	\$63,995.07	\$63,995.07	\$2,042,064.14
2024	\$70,935.22	\$46,309.89	\$117,245.11	\$1,472,727.83	\$155,100.00	\$93,838.08	\$61,261.92	\$61,261.92	\$1,948,226.07
2025	\$73,063.28	\$44,181.84	\$117,245.11	\$1,399,664.55	\$155,100.00	\$96,653.22	\$58,446.78	\$58,446.78	\$1,851,572.85
2026	\$75,255.18	\$41,989.94	\$117,245.11	\$1,324,409.38	\$155,100.00	\$99,552.81	\$55,547.19	\$55,547.19	\$1,752,020.03
2027	\$77,512.83	\$39,732.28	\$117,245.11	\$1,246,896.55	\$155,100.00	\$102,539.40	\$52,560.60	\$52,560.60	\$1,649,480.64
2028	\$79,838.22	\$37,406.90	\$117,245.11	\$1,167,058.33	\$155,100.00	\$105,615.58	\$49,484.42	\$49,484.42	\$1,543,865.05
2029	\$82,233.36	\$35,011.75	\$117,245.11	\$1,084,824.96	\$155,100.00	\$108,784.05	\$46,315.95	\$46,315.95	\$1,435,081.01
2030	\$84,700.36	\$32,544.75	\$117,245.11	\$1,000,124.60	\$155,100.00	\$112,047.57	\$43,052.43	\$43,052.43	\$1,323,033.44
2031	\$87,241.38	\$30,003.74	\$117,245.11	\$912,883.22	\$155,100.00	\$115,409.00	\$39,691.00	\$39,691.00	\$1,207,624.44
2032	\$89,858.62	\$27,386.50	\$117,245.11	\$823,024.61	\$155,100.00	\$118,871.27	\$36,228.73	\$36,228.73	\$1,088,753.17
2033	\$92,554.38	\$24,690.74	\$117,245.11	\$730,470.23	\$155,100.00	\$122,437.40	\$32,662.60	\$32,662.60	\$966,315.77
2034	\$95,331.01	\$21,914.11	\$117,245.11	\$635,139.23	\$155,100.00	\$126,110.53	\$28,989.47	\$28,989.47	\$840,205.24
2035	\$98,190.94	\$19,054.18	\$117,245.11	\$536,948.29	\$155,100.00	\$129,893.84	\$25,206.16	\$25,206.16	\$710,311.40
2036	\$101,136.66	\$16,108.45	\$117,245.11	\$435,811.62	\$155,100.00	\$133,790.66	\$21,309.34	\$21,309.34	\$576,520.74
2037	\$104,170.76	\$13,074.35	\$117,245.11	\$331,640.86	\$155,100.00	\$137,804.38	\$17,295.62	\$17,295.62	\$438,716.36
2038	\$107,295.89	\$9,949.23	\$117,245.11	\$224,344.97	\$155,100.00	\$141,938.51	\$13,161.49	\$13,161.49	\$296,777.85
2039	\$110,514.76	\$6,730.35	\$117,245.11	\$113,830.21	\$155,100.00	\$146,196.66	\$8,903.34	\$8,903.34	\$150,581.19
2040	<u>\$113,830.21</u>	<u>\$3,414.91</u>	<u>\$117,245.11</u>	(\$0.00)	<u>\$155,100.65</u>	<u>\$150,583.21</u>	<u>\$4,517.44</u>	<u>\$4,517.44</u>	(\$2.03)
	\$2,200,000.00	\$1,082,863.18	\$3,282,863.18		\$3,567,300.65	\$2,550,404.99	\$1,367,298.62	\$1,016,895.66	

East Bethel Cost Share Payment Schedule

10/4/2012

<u>Hypothetical Level Amortization Schedule</u>					<u>Actual Amortization Schedule</u>				
	3.0%					3.0%			
	<u>principal</u>	<u>interest</u>	<u>level pmt</u>	<u>balance</u>	<u>actual pmt</u>	<u>principal paid</u>	<u>interest owed</u>	<u>interest paid</u>	<u>balance</u>
2012				\$2,200,000.00					\$2,200,000.00
2013	\$51,245.11	\$66,000.00	\$117,245.11	\$2,148,754.89	\$0.00	\$0.00	\$66,000.00	\$0.00	\$2,266,000.00
2014	\$52,782.47	\$64,462.65	\$117,245.11	\$2,095,972.42	\$0.00	\$0.00	\$67,980.00	\$0.00	\$2,333,980.00
2015	\$54,365.94	\$62,879.17	\$117,245.11	\$2,041,606.48	\$0.00	\$0.00	\$70,019.40	\$0.00	\$2,403,999.40
2016	\$55,996.92	\$61,248.19	\$117,245.11	\$1,985,609.56	\$0.00	\$0.00	\$72,119.98	\$0.00	\$2,476,119.38
2017	\$57,676.83	\$59,568.29	\$117,245.11	\$1,927,932.73	\$0.00	\$0.00	\$74,283.58	\$0.00	\$2,550,402.96
2018	\$59,407.13	\$57,837.98	\$117,245.11	\$1,868,525.60	\$0.00	\$0.00	\$76,512.09	\$0.00	\$2,626,915.05
2019	\$61,189.35	\$56,055.77	\$117,245.11	\$1,807,336.26	\$0.00	\$0.00	\$78,807.45	\$0.00	\$2,705,722.50
2020	\$63,025.03	\$54,220.09	\$117,245.11	\$1,744,311.23	\$0.00	\$0.00	\$81,171.68	\$0.00	\$2,786,894.18
2021	\$64,915.78	\$52,329.34	\$117,245.11	\$1,679,395.45	\$0.00	\$0.00	\$83,606.83	\$0.00	\$2,870,501.00
2022	\$66,863.25	\$50,381.86	\$117,245.11	\$1,612,532.20	\$0.00	\$0.00	\$86,115.03	\$0.00	\$2,956,616.03
2023	\$68,869.15	\$48,375.97	\$117,245.11	\$1,543,663.06	\$214,971.70	\$126,273.22	\$88,698.48	\$88,698.48	\$2,830,342.82
2024	\$70,935.22	\$46,309.89	\$117,245.11	\$1,472,727.83	\$214,971.70	\$130,061.42	\$84,910.28	\$84,910.28	\$2,700,281.40
2025	\$73,063.28	\$44,181.84	\$117,245.11	\$1,399,664.55	\$214,971.70	\$133,963.26	\$81,008.44	\$81,008.44	\$2,566,318.14
2026	\$75,255.18	\$41,989.94	\$117,245.11	\$1,324,409.38	\$214,971.70	\$137,982.16	\$76,989.54	\$76,989.54	\$2,428,335.99
2027	\$77,512.83	\$39,732.28	\$117,245.11	\$1,246,896.55	\$214,971.70	\$142,121.62	\$72,850.08	\$72,850.08	\$2,286,214.37
2028	\$79,838.22	\$37,406.90	\$117,245.11	\$1,167,058.33	\$214,971.70	\$146,385.27	\$68,586.43	\$68,586.43	\$2,139,829.10
2029	\$82,233.36	\$35,011.75	\$117,245.11	\$1,084,824.96	\$214,971.70	\$150,776.83	\$64,194.87	\$64,194.87	\$1,989,052.27
2030	\$84,700.36	\$32,544.75	\$117,245.11	\$1,000,124.60	\$214,971.70	\$155,300.13	\$59,671.57	\$59,671.57	\$1,833,752.14
2031	\$87,241.38	\$30,003.74	\$117,245.11	\$912,883.22	\$214,971.70	\$159,959.14	\$55,012.56	\$55,012.56	\$1,673,793.00
2032	\$89,858.62	\$27,386.50	\$117,245.11	\$823,024.61	\$214,971.70	\$164,757.91	\$50,213.79	\$50,213.79	\$1,509,035.09
2033	\$92,554.38	\$24,690.74	\$117,245.11	\$730,470.23	\$214,971.70	\$169,700.65	\$45,271.05	\$45,271.05	\$1,339,334.44
2034	\$95,331.01	\$21,914.11	\$117,245.11	\$635,139.23	\$214,971.70	\$174,791.67	\$40,180.03	\$40,180.03	\$1,164,542.78
2035	\$98,190.94	\$19,054.18	\$117,245.11	\$536,948.29	\$214,971.70	\$180,035.42	\$34,936.28	\$34,936.28	\$984,507.36
2036	\$101,136.66	\$16,108.45	\$117,245.11	\$435,811.62	\$214,971.70	\$185,436.48	\$29,535.22	\$29,535.22	\$799,070.88
2037	\$104,170.76	\$13,074.35	\$117,245.11	\$331,640.86	\$214,971.70	\$190,999.57	\$23,972.13	\$23,972.13	\$608,071.31
2038	\$107,295.89	\$9,949.23	\$117,245.11	\$224,344.97	\$214,971.70	\$196,729.56	\$18,242.14	\$18,242.14	\$411,341.75
2039	\$110,514.76	\$6,730.35	\$117,245.11	\$113,830.21	\$214,971.70	\$202,631.45	\$12,340.25	\$12,340.25	\$208,710.30
2040	<u>\$113,830.21</u>	<u>\$3,414.91</u>	<u>\$117,245.11</u>	(\$0.00)	<u>\$214,972.35</u>	<u>\$208,711.04</u>	<u>\$6,261.31</u>	<u>\$6,261.31</u>	(\$0.74)
	\$2,200,000.00	\$1,082,863.18	\$3,282,863.18		\$3,869,491.25	\$2,956,616.77	\$1,669,490.51	\$912,874.48	

Jack Davis

From: Pickart, Bryce [bryce.pickart@metc.state.mn.us]
Sent: Wednesday, October 31, 2012 11:23 AM
To: Jack Davis
Subject: RE: Wastewater Service Agreement and Construction Cooperation and Cost Sharing Agreement

Jack,

We'll move all the payments back one year (forgot to do that, as we did on SAC). We'll send you three new spreadsheets: (1) similar to current agreement, but linked to revised forecast; (2) constant annual payments, beginning in 2019; and (3) constant annual payments, beginning in 2024.

Are you talking to the City Council about the Viking "muck-out" option also?

Bryce

-----Original Message-----

From: Jack Davis [mailto:jack.davis@ci.east-bethel.mn.us]
Sent: Wednesday, October 31, 2012 9:49 AM
To: Pickart, Bryce
Subject: RE: Wastewater Service Agreement and Construction Cooperation and Cost Sharing Agreement

Bryce,

We will be presenting these options to City Council on November 7, 2012. The following are questions that will be asked:

- 1.) Why will have to pay interest beginning January 2013 on a project that will not be operational and can this schedule be backed off until 2014, and
- 2.) Will payments (if the deferment option is not chosen) on the \$2.2 million be based on the number of SAC units connect or the forecasted schedule in your attachment. Thanks.

Jack

-----Original Message-----

From: Pickart, Bryce [mailto:bryce.pickart@metc.state.mn.us]
Sent: Wednesday, October 10, 2012 3:43 PM
To: Jack Davis
Cc: Willett, Jason; Thompson, Leisa
Subject: Wastewater Service Agreement and Construction Cooperation and Cost Sharing Agreement

Jack,

I have drafted the attached amendments to each agreement, which restructures financing to be more favorable to the City in the early years, without changing the net present value of the SAC computation nor the cost sharing. The first amendment also addresses grandparenting Castle Towers and Village Green. Backup spreadsheets are also attached.

Please review and comment. Thanks.

-Bryce-